

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON MUTUAL BANK, a federal
association,

Plaintiff,

v.

M/V WILDERNESS EXPLORER, Coast
Guard Official No. 520611, IN REM,

Defendant.

WASHINGTON MUTUAL BANK, a federal
association,

Plaintiff,

v.

M/V WILDERNESS ADVENTURER, Coast
Guard Official No. 664136, IN REM,

Defendant.

WASHINGTON MUTUAL BANK, a federal
association,

Plaintiff,

v.

M/V WILDERNESS DISCOVERER, Coast
Guard Official No. 952722, IN REM,

Defendant.

IN ADMIRALTY

CONSOLIDATED ACTIONS

No. C06-0105 MJP

**STIPULATION AND ORDER
AUTHORIZING SUBSTITUTE
CUSTODIAN TO ALLOW
INSPECTIONS OF VESSELS AND
TO ALLOW CLEANING CREW
PURSUANT TO LAR 135(b)(5) AND
LAR 135 (d)**

**NOTED ON MOTION CALENDAR
MARCH 30, 2006**

No. C06-0106 MJP

No. C06-107 MJP

CLERK'S ACTION REQUIRED

STIPULATION AND ORDER - 1
Case No. C06-0105 MJP

1 Plaintiff Washington Mutual Bank and Intervenor Plaintiffs Goldbelt Enterprises, Inc.,
2 Cultural Preservation, Inc., Jeffrey Allen, Shoreside Petroleum, Inc. and Harbor Enterprises,
3 Inc. dba Petro Marine Services, by and through their respective counsel of record do Agree
4 and Stipulate as follows:

5 1. On January 20, 2006, this Court appointed Roger Lohrer as the Substitute
6 Custodian of the M/V WILDERNESS EXPLORER, Coast Guard Official No. 520611, M/V
7 WILDERNESS ADVENTURER, Coast Guard Official No. 664136 and M/V WILDERNESS
8 DISCOVERER, Coast Guard Official No. 952722 (the "Vessels"). The Vessels were arrested
9 by the United States Marshal on January 24, 2006, and have been in the custody of the
10 Substitute Custodian since that date. This Court entered an Order of Default on March 16,
11 2006.

12 2. Local Admiralty Rule 135(b)(5) provides that "*no person except the appointed*
13 *Substitute Custodian will be allowed to enter the Vessel except as ordered by this Court for*
14 *safekeeping and to protect the Vessel.*" Accordingly, the Parties must seek this Court's
15 approval for prospective purchasers to board and inspect the Vessels.

16 3. The Parties have been approached by prospective purchasers seeking to inspect
17 the Vessels in advance of any judicial sale by the United States Marshal. The Parties stipulate
18 that allowing prospective purchasers and marine surveyors to board and inspect the Vessels
19 for the purpose of assessing market value in the presence and under the supervision and
20 control of the Substitute Custodian is appropriate under the circumstances and in the best
21 interest of all Parties.

22 4. The Parties agree, stipulate and request that this Court enter an Order allowing
23 the Substitute Custodian to permit boarding and inspection of the Vessels by prospective
24 purchasers and marine surveyors in order to determine the Vessels' condition and value. The
25 Parties agree and stipulate that any individual boarding under the supervision of the Substitute
26 Custodian shall be required to execute a Release and Hold Harmless Agreement and

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1 indemnify the United States, the United States Marshal, the Parties, the Substitute Custodian
 2 and the Vessels from any and all claims whatsoever arising out of their entry aboard the
 3 Vessels. The Parties agree and stipulate that the Substitute Custodian shall have discretion to
 4 arrange reasonable times for boarding and inspection of the Vessels by prospective purchasers
 5 and marine surveyors as often as is necessary. All costs of such boarding and inspection
 6 shall, upon further order of this Court, be deemed administrative expenses or expenses in
 7 *custodia legis*.

8 5. Pursuant to LAR 135(c), the Vessels, according to the Substitute Custodians,
 9 require cleaning prior to any inspection. The Parties agree, stipulate and request an Order
 10 from this Court authorizing Plaintiff, Washington Mutual Bank, at its *sole* expense, to retain a
 11 cleaning crew to board the Vessels under the direction and supervision of the Substitute
 12 Custodian and clean them in advance of any inspections by prospective purchasers. The
 13 Parties agree that the cost shall not exceed \$600.00 and that any cleaning crew shall be
 14 required to execute a Release and Hold Harmless Agreement and to hold harmless and
 15 indemnify the United States, the United States Marshal, the Vessels and all Parties from any
 16 and all claims whatsoever arising out of the cleaning crew's activity aboard the Vessels.

17 6. The Parties have attached an Order for this Court's consideration.

18 SO AGREED AND STIPULATED on this the ____ day of March, 2006.

19
 20 LANE POWELL PC

21
 22 Dated: _____

23 Katie Smith Matison, WSBA #20737
 24 Charles R. Ekberg, WSBA #342
 25 Attorneys for Plaintiff
 26 Washington Mutual Bank, a federal
 association

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 Case No. C06-0105 MJP

HELSELL FETTERMAN LLP

Dated: _____

Scott Edward Collins, WSBA #18399
Attorneys for Intervenor Plaintiffs
Shoreside Petroleum Inc., Harbor
Enterprises, Inc. dba Petro Marine Services

HOLMES WEDDLE & BARCOTT

Dated: _____

John E. Casperson, WSBA #14292
Attorney for Intervenor Plaintiffs Goldbelt
Enterprises, Inc. and Cultural Preservation,
Inc.

GINSTER WEBB

Dated: _____

Anthony Joseph Ginster, WSBA #19310
Gordon C. Webb, WSBA #22777
Attorney for Intervenor Plaintiff Jeff Allen

ORDER

THIS DAY THIS CAUSE came on to be heard upon the Stipulation of the Plaintiff and Plaintiffs in Intervention seeking to allow prospective purchasers, marine surveyors and a cleaning crew to board the Vessels under the supervision of the Substitute Custodian, pursuant to LAR 135(b)(5) and (d) and this Court, upon consideration thereof, finds that this Stipulated Relief should be granted.

IT IS THEREFORE ORDERED AND ADJUDGED that the Substitute Custodian may permit boarding and inspection of the Vessels by marine surveyors, and prospective purchasers in order to determine the Vessels' condition and value. All costs of boardings and inspections shall be deemed administrative costs or expenses in *custodia legis*. All persons entering aboard the Vessels shall execute a Waiver, Release and Hold Harmless Agreement

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1 releasing and holding harmless the United States, the United States Marshal, all Parties herein
2 and the Vessels *in rem* from any and all claims whatsoever arising out of the inspections of
3 the Vessels. The Substitute Custodian is hereby granted authorization to arrange any
4 boardings and inspections of the Vessel as frequently as necessary and at such reasonable
5 times as may be necessary.

6 IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff Washington
7 Mutual Bank, is hereby authorized to allow a cleaning crew to board the Vessels at
8 Washington Mutual Bank's *sole* expense to clean the Vessels under the supervision of the
9 Substitute Custodian. The cleaning crew must execute a Waiver, Release and Hold Harmless
10 Agreement releasing the United States, the United States Marshal, the Vessels and all Parties
11 herein from any and all claims whatsoever arising out of their activities aboard the Vessels.

12 The United States Clerk of this Court is Ordered to deliver copies of this Order to the
13 United States Marshal.

14 SO ORDERED AND ADJUDGED this the 31st day of March, 2006.

15
16 /s Marsha J. Pechman
17 Judge Marsha J. Pechman

18 Presented by:

19 LANE POWELL PC

20
21 By Katie Smith Matison, WSBA #20737
22 Charles R. Ekberg, WSBA #342
23 Attorneys for Plaintiff
Washington Mutual Bank, a federal
association

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7 Enterprises, Inc. dba Petro Marine Services

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9 HOLMES WEDDLE & BARCOTT

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11 John E. Casperson, WSBA #14292
12 Attorney for Intervenor Plaintiffs Goldbelt
13 Enterprises, Inc. and Cultural Preservation,
14 Inc.

15 GINSTER WEBB

16 _____
17 Anthony Joseph Ginster, WSBA #19310
18 Gordon C. Webb, WSBA #22777
19 Attorney for Intervenor Plaintiff Jeff Allen

20 Approved by:

21 UNITED STATES MARSHAL

22 By _____
23 Diana Ohashi

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Case No. C06-0105 MJP

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